

Iowa Judicial Branch
Digital Audio Recording Technology (DART) Committee
Notes from the 3rd Meeting (Approved)
July 31, 2009; Des Moines

All committee members in attendance except: Judge Kurt Wilke, Judge Bill Pattinson, and Gerald Olson. (See the list of committee members on the judicial branch website at the link shown in item 2, below.) State court administration staff attending: John Goerdts, Scott Ruhnke, and Steve Davis. Other non-members attending some or all of the meeting: several court reporters and persons conducting presentations for the committee (see below).

1. Welcome and approval of the notes from the meeting on June 26

- The meeting began at 9:30 AM. The committee's co-chairs, Chief Judge Charles Smith and Beth Baldwin, welcomed the committee and reviewed the agenda.
- A motion was made and seconded to approve the meeting notes from June 26; motion passed unanimously.

2. Presentation by the Iowa Court Reporters Association

- Presentation by Sheryl Culver, President; and Karen Teig, Immediate Past President
- The general theme of the presentation was that the ICRA opposes the use of DART rather than certified court reporters.
- Following their presentation, the two presenters answered questions from Committee members. For example:
 - How does a court repeat or replay a witness statement or an attorney's question if DART is being used? Answer: It's difficult and disruptive in some places; they have to stop the proceedings and find the place on the recording.
 - The Iowa courts will soon begin implementing electronic filing and document management (EDMS). How will this impact the work of court reporters and the need for support staff in the courtroom? Answer: It's difficult to know at this time. It will evolve as it becomes part of the process.
 - How is the accuracy of a court reporter's transcript evaluated? Answer: Attorneys or the judge in the proceeding can challenge the accuracy of transcripts.
 - What are the qualifications or required credentials for people who produce transcripts from digital recordings of court proceedings? Answer: It varies. In some places there aren't any specific qualifications.
 - Comment by a presenter: DART records sound, while court reporters record voices; background noise can sometimes be so great that voices can be obscured on a digital recording, whereas a court reporter would ask the speaker(s) to repeat what they said so they can capture the statement clearly.
 - How can a DART system accurately record voir dire of jurors? Answer: This is one of the big problems with DART. They need wireless microphones.

- (The text of their presentation and a handout on certification requirements for court reporters are on the Iowa judicial branch page created for this committee at: http://www.iowacourts.gov/Advisory_Committees/Digital_Audio_Recording_Technology/Information/ Listed under: “Materials from the 3rd Committee Meeting (July 31, 2009)”.

3. Presentation by the AIB College of Business (Des Moines)

- Presentation by Jane Weingart, Chair of the AIB Board of Trustees (and former certified court reporter) and Nancy Williams, President of AIB
- The general theme of the presentation was that AIB provides high quality education and training in the field of court reporting; certified court reporters provide high quality services for the courts; and there continues to be demand for court reporters throughout the U.S.
- (The text of the AIB presentation and two handouts [the curriculum for a degree in court reporting and a list of jobs openings for court reporters] are on the Iowa judicial branch page created for this committee; see the link in section 2, above.)

4. Presentation by the Iowa State Bar Association

- Presentation by Bob Waterman, an attorney from Davenport
- Iowa attorneys want a reliable, accurate, and accessible record. Until the ISBA learns more about the available technology and the experience in jurisdictions that use it, the organization will not be taking a position on the issue.
- (Mr. Waterman did not use a prepared text for his comments, so there is nothing on the judicial branch web page from the ISBA.)

5. Presentation by the Iowa Public Defenders Association

- Presentation by Stephan Japuntich, President of the IPDA
- The general theme of the presentation was that the IPDA opposes the use of DART rather than certified court reporters.
- Committee members asked some questions; for example:
 - Have you heard of any problems in juvenile courts where judges recently lost their court reporters? Answer: He heard of some problems in District 2.
 - Any ideas regarding who would do a professional evaluation of DART for this committee? Answer: Possibly the National Center for State Courts
 - Do you have any knowledge of military courts, federal courts, or state courts where DART is used exclusively or for most cases – where they have the same kinds of due process concerns as the IPDA? Answer: He has contacts in some of these jurisdictions and will check with them.
 - Are you aware of any criminal cases on appeal where the decision hinged on a single word or phrase in a transcript? Answer: Yes, there was a recent case (*State v. Lofton?*)
- (The text of Mr. Japuntich’s presentation and a copy of the letter he sent to Chief Justice Ternus regarding court reporters and DART are on the Iowa judicial branch page created for this committee; see the link in section 2, above.)

6. Presentation by the Iowa Judges Association

- Presentation by Hon. Robert Blink, District Court Judge, 5th Judicial District
- The general theme of the presentation was that the IJA opposes the use of DART rather than certified court reporters.
- After the presentation, committee members asked some questions; for example:
 - What are the advantages of real-time reporting? Answer: Allows judges to focus on listening to what's being said in court without having to take notes; can quickly refer back to the written text if someone questions what was said or asked in court.
 - Apparently, a few judges have anonymously said that DART could be an effective tool for keeping the record. Response: A vast majority of judges in Iowa oppose using DART instead of court reporters. There might be some routine matters that are rarely appealed where it could be used, but it should not be used for most District Court matters.
 - If judges did not have court reporters, how many support staff would they need? Answer: Most judges, especially in rural counties, have no other support staff. Court reporters perform a whole array of support functions.
- (The text of his presentation and two handouts (a list of court reporter duties provided by Judge David Christensen; and a letter from Professor Robert Rigg, Drake University Law School) are on the Iowa judicial branch page created for this committee; see the link in section 2, above.)

7. Presentation by Jeff Farrell, Assistant Chief Administrative Law Judge, Iowa Department of Inspections and Appeals

- He does not have a position on whether the Iowa courts should use DART. However, the ALJs in Iowa have been using a handheld single-track digital recorder to record their hearings for the past 3 to 5 years. They used tape recorders for many years before that. The digital recorders are a huge improvement.
- They have 18 ALJs who handled more than 6,000 hearings involving disputes from OSHA, Dept. of Human Services, Dept. of Public Health, and Dept. of Natural Resources. Most hearings are one hour or less; some are a few days. They can record 21 hours of audio on one chip. They download the audio file to their computer at the end of the day.
- The quality of the recordings is very good; he listens to parts of recorded proceedings about 2 to 3 times each week.
- He lost a couple minutes of a hearing once because he forgot to turn on the recorder. He asked everyone to start over.
- He's had his digital recorder for 3 years and has never had a technical problem with it.
- (Mr. Farrell did not have a prepared text for his remarks, so there are no materials from his presentation on the judicial branch web page created for this committee.)

Lunch break at 12:15 p.m.; the meeting resumed at 1:15

8. Discussion of the plan for site visits to jurisdictions that use DART

- The committee reviewed and approved the plan to have teams of committee members visit 6 jurisdictions: (1) Federal District Courts in Omaha & Lincoln, NE; state courts in: (2) Salt Lake City, UT; (3) Rochester, MN; (4) Minneapolis, MN; (5) Wheaton, IL; and (6) Willmar, MN.
- (The “Schedule for site visits to 6 courts with DART” is on the judicial branch web page created for this committee; see section 2, above)

9. Discussion of the proposed surveys to obtain information from judges, attorneys, and court staff at site visit locations

- Committee members had reviewed the survey forms and suggested some additional questions. The revisions will be made and the surveys will be sent to the courts prior to the site visits.

10. Discussion of DART tests in 4 or 5 locations in Iowa

- The committee agreed unanimously to invite all four of the companies that did presentations for the committee on June 26 to install their DART systems in one court in Iowa.
- The companies to be invited include: (1) FTR (For the Record); (2) CourtSmart Digital Systems; (3) JAVS (Jefferson Audio/Video Systems); and (4) High Criteria.
- The committee also approved the recommendation of the DART Evaluation Subcommittee to have these companies install PC-based systems in 4 to 5 courts that meet the following criteria:
 - 1 courtroom that handles mostly felony cases
 - 1 DAJ courtroom with a high volume of criminal cases
 - 1 courtroom that handles mostly juvenile cases
 - 1 courtroom that handles a lot of civil and domestic cases

The committee also requests that one company provide a portable recording system for:

- A juvenile judge who travels to multiple counties
- Chief Judge Smith will ask each of the other chief judges to nominate 2 or 3 courtrooms from their districts that meet these criteria; he will have a list of nominated courtrooms ready within a week.
- The committee authorized the Evaluation Subcommittee to review the nominations and decide which of the nominated courtrooms to include in the DART test and which vendor should be invited to install a system in each of those locations.
- The goal should be to have the installations completed and the courtrooms ready to begin testing the DART systems by the second week of September.

11. Discussion of the recommendations of the Evaluation Subcommittee regarding strategies for evaluating the reliability, accuracy, and costs of DART

- The committee had received and reviewed the subcommittee’s 10 recommendations prior to the meeting.

- After some discussion, the committee unanimously approved recommendations 1 through 9.
- Recommendation 10 provided four options for evaluating the accuracy of digital recordings produced during the test period of DART systems in 4 or 5 courts.
- After some discussion of the options, the committee unanimously approved employing recommended strategies 2 and 4:
 - Strategy 2: Have committee members review digital recordings of some court proceedings from jurisdictions that have been using DART for several years.
 - Strategy 4: The co-chairs will select on hearing (20 to 30 minutes in length) from each of the 4 – 5 test courtrooms and have the court reporter produce a written transcript for the hearing; the digital recording will be sent to an independent contractor/transcriptionist to have a transcript produced from the digital recording. Each committee member will listen to the digital recording from one (or more) of these hearings and evaluate the transcripts from that hearing compared to the digital recording.
- (The “Recommendations of the DART Evaluation Subcommittee” are available on the judicial branch web page created for this committee; see the link in section 2, above.)

12. Discussion of revisions to the committee meeting schedule

- After some discussion of the tasks and timeline that had been drafted after the first committee meeting, the committee agreed to amend the meeting schedule.
- (The “Revised Tasks and Schedule for the DART Committee” is on the judicial branch web page created for this committee; see the link in section 2, above.)

13. Discussion of process for producing a final report

- One committee member inquired whether there would be a single final report with recommendations agreed to by a majority of the members, or would there be an opportunity for those who do not agree with the majority to offer a minority report.
- One of the co-chairs indicated that a minority report would be acceptable, but reiterated that the committee should remain focused on the charge from the Judicial Council: to evaluate the accuracy, reliability, and costs of DART.

14. Next committee meeting: October 9 in Des Moines

Adjourned at 2:30 p.m.